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In The

Supreme Court of the United States

ROGER AND VIRGINIA GALLAND,

Petitioners,

v.

CITY OF CLOVIS, CLOVIS CITY COUNCIL, and CLOVIS MOBILE HOME RENT COMMISSION,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of California

BRIEF OF WESTERN MANUFACTURED HOUSING COMMUNITIES ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF THE PETITIONER

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I.

BRIEF OF WESTERN MANUFACTURED HOUSING COMMUNITIES ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF THE PETITIONER

Western Manufactured Housing Communities ("Western Manufactured Housing") has received the parties' written consent to file this brief as amicus curiae in support of petitioners Roger and Virginia Galland. Letters of consent have been filed with the Clerk of the Court.[1]

II.

WESTERN MANUFACTURED HOUSING'S INTEREST AS AMICUS CURIAE ARISES OUT OF ITS STATUS AS AN ASSOCIATION REPRESENTING THE OWNERS OF 1550 MOBILEHOME PARKS, WHOSE OWNERS FREQUENTLY FACE THE SAME KIND OF PROBLEMS ARISING OUT OF REGULATION OF PARKS WHICH CREATED THE PROBLEMS THAT LED TO THIS PETITION.

The unfair treatment of the Gallands by the City of Clovis and its officials is not unique to this case. Other mobilehome park owners have faced or been threatened with similar treatment. Western Manufactured Housing is the largest organization in California, and one of the largest in the nation, representing the interests of

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[1] No counsel for any party authored any part of this brief. No person or entity other than Western Manufactured Housing made any monetary contribution to the preparation or submission of this brief.

mobilehome park owners. The entire industry, in California and elsewhere, needs to be assured that the protections provided by law, and particularly the United States Constitution, are available to them in the event of overreaching by regulating entities.

III.

ARGUMENT

A. Introduction and Summary.

The petition for certiorari filed by the Gallands focuses primarily on the provisions of the Fifth Amendment to the United States Constitution, particularly the due process clause, and on 42 United States Code section 1983. Western Manufactured Housing will not restate the arguments persuasively made in that petition that focuses primarily on the supremacy of the federal constitution and the Civil Rights Act, and (1) how the remedies they create are available to all citizens of the United States victimized by wrongful acts of any state or local government, (2) these federal-created rights and protections can never be subservient to any state or local law or practice, and can be pursued *ab initio*, with no need to seek relief under or exhaust any state or local law.

The petition also demonstrates that the City of Clovis showed a lack of sensitivity to these principles, and that the California Supreme Court – overturning rulings of the trial court and court of appeal which recognized the arbitrary and unjust course of conduct in which the City was engaged – approved the City's improprieties.

Western Manufactured Housing endorses all the arguments made in the petition for certiorari, which show the sensitivity to the primacy of Federal law that the California Supreme Court failed to recognize – and has failed to recognize in a myriad of cases.[2]

Western Manufactured Housing will focus instead on a number of policy arguments showing the harm that these improper rulings work on those in the mobilehome park business, and indeed adversely impact the housing situation in California and the nation.

B. Where Laws Regulating Mobilehome Rental Rates Are Written Or Enforced, As Here, To Deny Owners Of Mobilehome Parks A Fair Return On Their Investment, A Policy Is Institutionalized Which Undermines The Goal Of Available And Affordable Housing – A Legislative Recognized Priority In California And A Priority Throughout The United States – And Creates And Magnifies A Problem Which Requires The Intervention Of This Court.

The Gallands sought reasonable rent increases to enable them to raise sufficient revenues from their

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[2] Since the facts necessary for this Court's inquiry are set out in the petition, they will not be repeated here.

It should be noted that while the petition focuses on the deprivation of substantive due process suffered by the Gallands, the complaint initially included a claim for deprivation of property without the requisite payment of just compensation. While this is not a theme pursued in the petition, it is apparent that such a deprivation took place and this would be an alternative remedy.

business to meet expenses and give them at least a minimal return on their investment. The Clovis Mobile Home Rent Review Commission, given the power to preclude increases that are "unreasonable," – misinterpreting facts and law and abusing its authority – torpedoed some efforts to raise rent and cut other raises sought to a fraction that stifled the very purpose for which the raises were sought – fair economic treatment. Even though the trial court and court of appeal ruled in favor of the Gallands – whose position was supported by overwhelming evidence – the California Supreme Court undid the correction and told the Gallands to return to the City where they would be subjected – in all likelihood – to another unfair and abusive procedure.

Where regulatory entities do not have mechanisms in place to insure that those regulated are given the opportunity to earn a livelihood in their profession, or when they have such mechanisms in place but ignore or abuse them, it is not only the regulated who suffer but all others in that business and – often – all other citizens.

That is important here because mobile homes contribute to the total stock of available housing. California, like some other states, is in the throes of a housing crisis. The legislature has given special recognition to this problem. California Government Code section 65580(a) provides:

> The availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every California family is a priority of the highest order.

And California Government Code section 65589.5(a)(1) states that "[t]he lack of affordable housing is a critical problem which threatens the economic, environmental and social quality of life in California." *See also* Government Code sections 65300, 65589.5[a][2] ("California housing has become the most expensive in the nation"), 65700(b), 65580(b), and 65913.9. General plans, which all California cities must adopt, are required to include mobilehomes as part of their housing inventory. Government Code section 65583.[3]

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[3] The California housing crisis has predictably been the subject of a plethora of newspaper and magazine articles in recent years. In its amicus curiae brief before the California Supreme Court, Western Manufactured Housing identified over 25 such articles as well as several articles to similar effect from other jurisdictions. A representative sampling of California articles includes Bustillo, *Democrats Urge $1-Billion Plan To Ease Chronic Housing Shortage*, Los Angeles Times, May 5, 2000, pp. A3 and A22 (points out that California is building only about half the new homes each year experts state it needs); Wilcox, *Home Prices Up; Supply Shrinking*, Los Angeles Daily News May 18, 1999, p. 1; Strickland, *Fewer Californians Able To Afford Homes*, Los Angeles Times, April 7, 2000, p. C2; Dreier and Breidenbach, *How Do We Bridge The Housing Gap*, Los Angeles Times, September 12, 1999, p. M5; Boyarsky, *City Fails To Heed Housing Problems*, Los Angeles Times, March 20, 1997, p. A13; Hong, *10-Year Wait For Housing Help In L.A. Is Worst In U.S., HUD Says*, Los Angeles Times March 9, 1999, p. 13; Howard, *Report Urges County To Address Shortage Of Affordable Properties*, Los Angles Times, September 7, 1999, p. C1; Strickland, *California Sees Drop In Home Affordability*, Los Angeles Times, March 9, 2000, p. C1; and Lee, *The Housing Market's Missing In Action*, Los Angeles Times, October 3, 1999, p. C1. For a look at similar problems in New York, *see* Rozhon, *High Costs in Hamptons Force Workers Out*, New York Times, May 7, 2000, p. 1.

The kind of regulatory scheme here involved is a particularly severe form of rent control. Legal and social scholars have long recognized that – whatever marginal benefits it may arguably bring – such controls limit supply of housing and raise costs and rents. For example, in *Rent Control And The Theory of Efficient Regulation,* 54 Brooklyn Law Review 741, 767 (1988), the eminent Richard Epstein wrote:

> Without regulation, the price would rise, the demand would ease, and the supply would increase until the market was back in equilibrium.

In another article, Mr. Epstein demonstrated that a curtailment of rent controls and similar practices will enable tenants to get the most for their money. *Rent Control Revisited: One Reply To Seven Critics,* 54 Brooklyn Law Review 1281, 1304 (1989).

Specifically addressing the California mobilehome situation is Hirsch and Hirsch, *Legal-Economic Analysis of Rent Control in a Mobile Home Context: Placement Values and Vacancy Decontrol,* 35 U.C.L.A. Law Review 399, 463 (1988). The Hirsches reached the obvious conclusion that stringent regulation deters persons who might otherwise be so inclined from creating or investing in mobilehome parks. That this has happened in California is demonstrated by a statistical analysis that shows that in 1982 there were 5200 such parks with 388,800 spaces, while in 2000 those numbers had shrunk to 4959 parks with 369,137 spaces. *Mobilehome Park Maintenance and Inspection Report Pursuant To Health And Safety Code Section*

18400(1(g), published in 1999 by the California Department of Housing and Community Development, Division of Codes and Standards.

The courts have not been silent on this issue. In *Hall v. City of Santa Barbara,* 813 F.2d 198, 208 fn. 26 (9th Cir. 1986), disapproved by this Court on other grounds in *Yee v. City of Escondido,* 503 U.S. 519 (1992), the United States Court of Appeals for the Ninth Circuit wrote:

> We also note what appears to be a growing consensus that 'rent control causes a reduction in the quality of existing rental housing stock and discourages investment in new rental property,' actually exacerbating a problem it is intended to ameliorate. The Report of the President's Commission on Housing 1 (1982). *See, e.g.,* P. Samuelson & W. Nordhaus, *Economics* 393-94 (12th ed. 1985); W. Baumol & A. Blinder, *Economics: Principles and Policy 62-64* (3d ed. 1985); Muth, [*Redistribution of Income Through Regulation in Housing,* 32 Emory L.J. 691,] 693-98 [1983] *cf.* Frey, Prommerehne, Schneider & Gilbert, *Consensus and Dissension Among Economists: An Empirical Inquiry,* 74 Amer. Econ. Rev. 986, 988, 991 (1984) (fewer than 2 percent of United States economists surveyed at random generally disagreed with the proposition that '[a] ceiling on rents reduces the quantity and quality of housing available'); *see also Rent Control's Big Dilemma,* San Francisco Chron., Feb 28, 1986, at 76, col. 1.

What California's proliferating mobilehome rent control ordinances have generated is not affordable housing, but lawsuits mostly pitting – directly or indirectly – those

whose income comes from mobilehomes against regulating governmental entities. The following list is not exhaustive, but representative. In addition to *Yee* and *Hall*, cases include *Montclair Parkowners Ass'n v. City of Montclair*, 211 F.3d 1144 (9th Cir. 2000), withdrawn, 238 F.3d 1084 (9th Cir. 2001); *Rainbow Disposal Co. v. Escondido Mobilehome Park Rental Rev. Bd.*, 64 Cal. App. 4th 1159 (1998); *Yee v. Mobilehome Park Rental Rev. Bd.*, 62 Cal. App. 4th 1409 (1998); *Westwinds Mobile Home Park v. Mobilehome Park Rental Rev. Bd.*, 30 Cal. App. 84 (1994); *Adamson Companies v. City of Malibu*, 854 F. Supp. 1476 (C.D. Cal. 1994); *Palomar Mobilehome Park Ass'n v. City of San Marcos*, 989 F.2d 362 (9th Cir. 1993); *Sandpiper Mobile Village v. City of Carpenteria*, 10 Cal. App. 4th 542 (1993); *Casella v. City of Morgan Hill*, 230 Cal. App. 3d 43 (1991); *Sierra Lake Reserve v. City of Rocklin*, 938 F.2d 951 (9th Cir. 1991); vacated in part 506 U.S. 802, *on remand* 987 F.2d 662 (9th Cir. 1992); *Oceanside Mobile Home Park Owners' Ass'n v. City of Oceanside*, 154 Cal. App. 3d 887 (1984). *Ehrlich v. Menezes*, 21 Cal. 4th 543 (1999), deserves special emphasis because there the California Supreme Court, the very court which destroyed the Gallands' rights, recognized (at 21 Cal. 4th 560) the diminishing supply of affordable housing in California.

In sum, this case involves not only a personal injury to the Gallands – which is significant and deserves correction – and a threat of ongoing injury and frustration to this amicus, Western Manufactured Housing Communities Association and others similarly situated throughout the United States, it involves significant public issues as well. If state and local governments use their enormous regulatory powers, not to encourage development of much-needed housing, including mobilehome park

housing, but to frustrate such development by making such development and investment in such development economically unfeasible, the critical need for housing – particularly affordable housing for low and middle income persons – the current and growing crisis will only be exacerbated.

IV.

CONCLUSION

The City of Clovis is using its' regulatory powers to deny deserving citizens, such as the Gallands, basic economic and constitutional rights. Other government entities in California are on a similar course, as are entities in other states. The remedy is there: 42 U.S.C. section 1983.

This Court has heard much in recent years about the abuse of landowner rights in California in a number of contexts. This is yet another example. This Court is urged to accept certiorari in this case, not only to rectify an injustice to the Gallands, but to preserve the integrity of the mobilehome industry, encourage the much-needed development of affordable housing in this country – and to again remind state and local governments of a lesson that they seem reluctant to learn: the United States Constitution is the supreme law of the land.

Respectfully submitted,

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